

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.364 of 1998

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1. Bishnu Pratap Lal
 2. Bhanu Pratap Lal both sons of late Ram Pratap Lal, resident of village-Sherpur Police Station and District Buxar at present at village and Police Station Falka District-Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General cum Inspector General of Police Bihar, Main Secretariat at Patna
3. The Deputy Inspector General, Koshi Range at Saharsa within the district of Saharsa
4. The Superintendent of Police at Purnia
5. The Deputy Superintendent of Police of Purnia.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Advocate

For the Respondent/s: Mr. Arshad Alam, SC-3

With Fakhruddin Ali Ahamad, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 04-05-2015

1. This writ application was filed on 09.01.1998 by one Ram Pratap Lal seeking quashing of an order dated 12.2.1986 passed by the Deputy Inspector General, Koshi Range, Saharsa, whereby, punishment of dismissal from service was imposed upon him. On the date when this writ application was filed, 12 years after the order imposing punishment was passed, petitioner's statutory appeal against the order of dismissal was pending disposal before the appellate authority i.e. the Director General-cum-Inspector General of Police,

Bihar, Patna.

2. The said petitioner Ram Pratap Lal died during the pendency of the writ application and has been substituted by his two sons.

3. The said Ram Pratap Lal, at the relevant point of time was posted as Officer-in-charge of Dhamdaha Police Station of Prunia District. A proceeding was initiated against him in the year 1985 on the charge that he remained unauthorizedly absent from 14.2.1985 till 23.3.1985. He was placed under suspension. This is an admitted fact that the petitioner did not submit his written statement of defence nor did he participate in the departmental proceeding. He sought time for submitting his written statement of defence and for participating in the departmental enquiry on the ground of his illness. This is not in dispute that departmental enquiry was held ex-parte wherein the departmental witnesses were examined. The petitioner was again communicated by the Inquiry Officer to participate in the enquiry and produce defence witness, if any. He failed to do so. The Inquiry Officer, accordingly, submitted his report holding the charge of unauthorized absence for the said period as proved, in its report dated 30.10.1985.

4. There is a dispute whether the enquiry report was supplied to the petitioner or not. It is the petitioner's plea that no



report of the enquiry officer was sent to him. On the other hand, a plea has been taken by the respondents that such enquiry report was sent to him, along with second show cause notice which the petitioner had refused to accept. Finally, agreeing with the findings of the Inquiry Officer, the disciplinary authority i.e. Deputy Inspector General Police, vide impugned order dated 12.2.1986, imposed upon the petitioner the said punishment of dismissal from service.

5. It appears from the pleadings on behalf of the parties that the petitioner did not prefer appeal against the order of dismissal, immediately after the order was passed and not within the period of six months as prescribed under Rule 852 of the Bihar Police Manual before the appellate authority. He did file the statutory appeal before the Director General-cum-Inspector General of Police on 29.01.1987, i.e. nearly 11 months after the order of dismissal was passed. In his memo of appeal he mentioned that he was submitting the memo of appeal after recovering from the ailment he was suffering from in order to explain delay in filing the appeal. Rule 852 of the Bihar Police Manual is extracted hereinbelow:-

“852. Procedure in appeals.-(a) Petitions of appeal or for revision of an order shall be presented to the officer against whose orders the appeal is preferred, within six months after the date on which the officer preferring the appeal was informed of the orders against which he appeals:

Provided that the appellate authority may, at his discretion, for good cause shown, extend the period to 12 months.

(b) Every petition of appeal or for revision of an order shall be accompanied by certified copies of the charges, the defence and the order otherwise it will at once be rejected. Court fee stamps are not to be affixed to such petitions and appeals.

(c) It will be the duty of the officer against whose order appeal is filed and in whose office, the appeal petition is disposed of, that all the papers are forwarded at once to the superior officer but in those cases in which appeal does not lie these papers shall not be forwarded and the reasons shall be immediately intimated to the officer filing appeal.

(d) The officer before whom an appeal is filed, shall keep a separate register concerning appeals in his office. It shall be kept in P.M. Form No. 115A. The disposal of appeal should be done within one month from the receipt of the file in the office and the information about the order should be given to the officer filing appeal.

(e) In the appeal register (which is necessary only for the offices of Deputy Inspector General/Inspector General), apart from the appeal received for orders, those appeals which have been received only for forwarding shall not be entered. Those representations which are received for orders, may be entered. These registers should be scrutinized from time to time by heads of offices so that the knowledge of pending matters may be available.

(f) At the time of filing appeal, the charged officer shall specially see that there are no irrelevant and impertinent facts in the representation and that no baseless allegation has been made against any departmental officer. If such allegations are made, a separate departmental proceeding should be taken up against the officer concerned.

6. The petitioner's appeal remained pending for years together. There is no material on record to suggest that the petitioner



ever approached the appellate authority by way of reminder for disposal of appeal. This is also apparent that the petitioner, despite the fact that his appeal remained pending before the appellate authority did not take any recourse for getting his appeal disposed of in any manner including by way of filing of writ petition before this Court. As I have noted above, this writ application came to be filed on 09.01.1998. It appears that the appellate authority, thereafter, have been woke up from his deep slumber and rejected the petitioner's appeal by an order dated 22.7.1998, nearly more than 11 years after the original petitioner had filed his appeal before him. The order of the appellate authority has been brought on record by way of Annexure-6 to a petition filed on behalf of the petitioner, which has also been challenged.

7. There are two dates relevant before I discuss the submissions made on behalf of the parties. The original petitioner Ram Pratap Lal attained the age of superannuation on 31.7.1994 and he died on 28.01.2010.

8. In order to assail the order passed by the disciplinary authority, Mr. Gyanand Roy, learned counsel appearing on behalf of the petitioner has contended that it was obligatory upon the State Respondents to have paid to the petitioner the subsistence allowance which he was entitled to, during the period he was placed under



suspension and a departmental proceeding was continuing. He has, relied upon Supreme Court judgment reported in **(1999) 3 SCC 679 (Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And another)** and has contended that because of non payment of subsistence allowance, the petitioner was in state of penury and was not in a position to participate in the departmental enquiry. He has further submitted that the petitioner was in fact suffering from some illness which prevented him to join his duties on 14.2.1985 and he remained absent till 23.3.1985. He has contended that though the petitioner had submitted the medical certificate issued by a Medical Practitioner, it was wrongly rejected by the disciplinary authority on the ground that the petitioner ought to have received medical treatment in a Government Hospital. He has submitted that such consideration is erroneous, in view of the decision of this Court reported in **2007 (Suppl.) PLJR 93 (Mithilesh Kumar Pathak Vs. Union of India & ors.)**. He has also submitted that while imposing punishment, the disciplinary authority wrongly took into account the past conduct of the petitioner without giving him any notice that such past conduct could also be a factor for determining the quantum of punishment to be imposed upon him. He has placed reliance upon a Supreme Court judgment reported in **(2010) 10 SCC 539 (Mohd. Yunus Khan Vs. State of U.P.)**.



9. Learned counsel appearing on behalf of the Respondents State of Bihar, on the other hand, has submitted that this application should not be entertained, claim of the petitioner being belated one as no plausible explanation has been placed for such delay. He has drawn my attention to the original records of the departmental proceeding produced before this Court, in compliance order of an order dated 08.12.2011 and has submitted that the enquiry report was as a matter of fact, sent to the petitioner and it is the petitioner who is responsible for not receiving the enquiry report.

10. He, however, has not been able to satisfy this Court as to in what circumstance the subsistence allowance could not be paid to the petitioner during the period he was under suspension. There is no denial of this fact that the original petitioner was not paid the subsistence allowance during the period of suspension. I would have accepted the plea raised by the learned counsel appearing for the State that this application should not be maintained, there being inordinate delay in filing the writ application but it is evident that the appellate authority sat tight over the appeal for long 11 years and swung into action only after this writ application was filed on 09.01.1998. The Court deprecates the conduct of the appellate authority. Further, I find that the appellate authority rejected the petitioner's appeal on the sole ground that filing of appeal was delayed by five months inasmuch as,

as per Rule 852 of the Bihar Police Manual, six months is the limitation period during which an appeal is required to be preferred. At least, this much reasonableness was expected from the appellate authority that when he was disposing of this appeal after 11 years of its filing, he should not have dismissed it on the ground of delay of five months in filing of the appeal.

11. Rule 852 of the Bihar Police Manual has been extracted hereinabove, which confers discretion upon the appellate authority to extend the period of filing of appeal to 12 months. I am of the view that in the facts and circumstances of the case and in view of the fact that he was deciding the appeal after 11 years, he should have exercised the discretion conferred upon him under Rule 852 of the Bihar Police Manual.

12. I do not wish to go into various arguments and the issues raised on behalf of the petitioner by learned counsel representing him as I intend to set aside the order of the appellate authority and remand the matter back to him for passing an order afresh.

13. Accordingly, the order of appellate authority dated 22.7.1998 passed by the Director General cum Inspector General of Police, Bihar, Patna vide letter No. 3547 is quashed. The matter is remanded back to the appellate authority to pass an order afresh. He

is directed not to reject the petitioner's appeal on the ground of delay. He will be required to consider the grounds taken by the petitioner in his memo of appeal which has been brought on record by way of Annexure-7 to the supplementary application filed on behalf of the petitioner. The appellate authority will also be required to consider the effect of non payment of subsistence allowance during the period the original Ram Pratp Lal was under suspension, on the result of the departmental enquiry in view of the plea which has been taken on behalf of the petitioner in course of submission and which has been taken note of above. The appellate authority will be required to pass a reasoned order on the petitioner's appeal, in the light of the present order within a period of three months from the date of receipt/production of a copy of this order.

14. The writ application is accordingly, allowed.

15. Let the original records of departmental proceeding produced by the learned counsel for the State be returned to him.

(Chakradhari Sharan Singh, J)

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